FILED
JUL 16 1951
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 100.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

HAROLD BLOOM, general assignee for the benefit of creditors of PAVONE TEXTILE CORP.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

BRIEF FOR RESPONDENT.

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ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

BRIEF FOR RESPONDENT.

The statement of facts presented by the Petitioner is substantially correct. There is but one question involved, namely, whether Petitioner is entitled to interest on its tax claims to the date of payment or to the date on which the general assignment was filed.

POINT I.

The decision of the court below does not deny a title, right, privilege or immunity under Section 3466 of the Revised Statutes of the United States.

Petitioner contends that the decision of the Court below is in conflict with the priority conferred by Section 3466 of the Revised Statutes. It is argued that the priority of payment to be accorded the United States in non-

bankruptcy proceedings, makes it mandatory that the government be paid its tax claims, in full, in these assignment proceedings and that "payment in full" includes interest to the date of payment.

The applicability of the statute has never been challenged by respondent; nor has it been denied by the Court below. On the contrary, the Court of Appeals specifically stated in rejecting the government's claim for post assignment interest (R. 25):

> "We are reinforced in this conclusion by the language of the Federal priority statute, which clearly has application here * * *.

Concededly, Section 3466 is determinative on the question of the order of priority in the State Court. It is not contended that the United States is limited to the same priority in assignment proceedings as it has in bankruptcy proceedings. Respondent recognizes that the law is well-established that Section 3466 has not been affected by any of the bankruptcy enactments, and that, therefore, Federal debts shall first be paid before other claims in State Court proceedings. What is disputed, however, is the erroneous belief that the definition of the word "priority" embraces the requirement that the Court shall award post-assignment interest in derogation of the general rule.

It has been assumed by the Petitioner that "payment in full" of its tax claims necessarily means payment of both principal and interest to the day of payment. In subsequent points in this brief respondent sets forth authority not only for the general proposition that post assignment interest is not payable, even to creditors entitled to priority of payment (pp. 4-15), but also that "full payment" of a claim, even where the statute may be construed to provide for such "full payment", does not entitle the claimant to interest to the date of payment (15-18).

In demanding post assignment interest, Petitioner seems to have lost sight of the fact that Section 3466 simply establishes an order of payment of government claims without defining what is meant by a claim. There is nothing in the statute which directs the payment of post-assignment interest in contravention of the common law rule which has been followed in the State of New York consistently and which has been recently affirmed by this Court in the case of *New York* v. *Saper,* 336 U. S. 328, hereinafter discussed.

Accordingly, there is no conflict between the decision of the Court below and the operation of the priority established under Section 3466. As a matter of fact, the ruling of the Court below now does for state insolvency proceedings, what this Court did for bankruptcy proceedings. In each case, the Court recognized the existence of a priority for tax claims and, applying the common law rule of non-payment of interest, arrived at like determinations for the same reasons.

The rulings are in harmony with what is just and equitable. In the words of the Court below (R. 27):

> "The rationale of the authorities hereinbefore cited is sound; they follow the long-established common-law rule, since no statute provides for the payment of post-bankruptcy or post-assignment interest; they harmonize the rules in bankruptcy and assignment proceedings; and they achieve a result that is just, fair, and equitable. To allow post-assignment interest on tax claims at variable and substantial rates to run on throughout the course of a lengthy assignment proceeding, and thereby consume all or much of the funds available, to the detriment of the other creditors, is in accord with neither law nor equity."

POINT II.

As a general rule, after property has passed into the hands of an assignee for the benefit of creditors, creditors of the estate are not entitled to post-assignment interest on their claims.

A mere recital of the leading cases on the issue of post-insolvency interest, it is respectfully submitted, clearly establishes that interest, upon debts of an insolvent estate, stops after the property passes into the hands of a receiver or assignee. In the case of *Thomas* v. *Western Car Co.*, 149 U. S. 95, the Court stated (p. 116):

> "As a general rule, after property of an insolvent passes into the hands of a receiver or of an assignee in insolvency, interest is not allowed on the claims against the funds. The delay in distribution is the act of the law; it is a necessary incident to the settlement of the estate. *Williams* v. *American Bank*, 4 Met. 317, 323; *Thomas* v. *Minot*, 10 Gray 263."

The rule was followed in the case of *Matter of People* (*Norske, Lloyd Ins. Co.*), 249 N. Y. 139, with the concomittant qualification (p. 147):

> "* * * The rule that interest is not allowed after property of an insolvent has passed into the hands of an official liquidator applies only in the distribution of the proceeds of the property by the liquidator where the proceeds are insufficient to pay all creditors in full."

Obviously, where the fund is sufficient to pay all claims in full with interest, there is no reason why interest accruing during the liquidation should not be allowed.

The reasons for the rule which the Court of Appeals described as one of administration rather than of law, were cogently stated as follows (pp. 146-147):

> "'As a general rule, after property of an insolvent passes into the hands of a received or of an assignee in insolvency, interest is not allowed on the claims against the funds. The delay in distribution is the act of the law; it is a necessary incident to the settlement of the estate.' (*Thomas* v. *Western Car Co.*, 149 U. S. 95.) Delay in the payment of a claim undoubtedly results in injury to the creditor. He does not receive full compensation unless interest is paid to him during the time in which payment of his claim is postponed. When the fund is insufficient to pay in full all the creditors who have the right to share in it, the burden of the consequent loss and injury should be equitably distributed among the creditors. * * * It is a rule of administration and not of law, for the law does not contemplate that a debtor may stop the running of interest until he has paid his debt. Interest continues to run against the debtor during liquidation; but on the principle that equality is equity, it has been held that all who have a right to share in the distribution of the fund in liquidation must bear equally the burden of the delay in the payment of their claims where the fund is insufficient to pay all in full."

In the case of *People* v. *American Loan and Trust Co.*, 172 N. Y. 371, further light is thrown on the reasons for the formulation of the general rule. The Court stated (p. 378):

> "* * * We agree with the learned Appellate Division that the statutory 'provision was made with the intention that the preference should take effect

> at the time at which all claims against the corporation would be presentable, and that it was not the intention of the legislature to allow either contractual interest or interest as damages to run on indefinitely through all the protracted proceedings that might continue, as they did in this case, for many years after the court took possession of the assets for the purpose of making distribution of them'."

In the case of *City of New York* v. *Saper, Trustee in Bankruptcy*, 336 U. S. 328 (fols. 25-31), the City of New York, the State of New York, and the United States of America, sought to enforce payment of their respective tax claims with interest to the date of payment. While the proceedings were in bankruptcy, the United States Supreme Court, among other things, affirmed the general rule. Mr. Justice Jackson delivered the opinion of the Court, and stated (p. 330) (R. 6):

> "If the question were one of first impression to be decided in the light of the present statute alone, we should have no difficulty in affirming the court below. More than forty years ago Mr. Justice Holmes wrote for this Court that the rule stopping interest at bankruptcy had then been followed for more than a century and a half. He said the rule was not a matter of legislative command or statutory construction but, rather, a fundamental principle, of the English bankruptcy system which we copied (*Sexton* v. *Dreyfuss*, 219 U. S. 33, 344)."

* * * * *

(p. 332):

> "The long-standing rule against post-bankruptcy interest thus appears implicit in our current Bankruptcy Act."

It is not disputed that the funds in the case at bar are not sufficient to pay the claims of all creditors with interest to the date of payment. Accordingly, the general rule providing for the termination of interest upon the filing of the assignment should be applied to the tax claims of the United States of America.

POINT III.

The general rule is applicable not only as to general creditors, but as to preferred creditors as well, in the absence of a specific exception created by statute.

The question as to whether or not the general rule is applicable to both preferred and unpreferred creditors was squarely presented in the case of *People* v. *American Loan and Trust Co. supra.* By the charter of the American Loan and Trust Co., it was provided that in a proceeding for the dissolution of the corporation the debts due to the company as guardian, receiver or depository of money in Court or of savings bank funds were to have a preference. When the company failed to meet the demands of payment of the deposits of the appellant savings bank, the Superintendent of Banks took possession. A receiver was appointed and the corporation was dissolved. The savings bank along with some other creditors presented claims to the receiver as preferred creditors, which he allowed with interest at the contractual rate to the date of suspension. Payment was made by four successive dividends, the last dividend stating that completion of the payment of principle was thereby being made. On the final accounting, the appellant savings bank and a receiver of the preferred creditor claimed they were entitled to post assignment interest. The questions certified by the Court were as follows (pp. 376, 377):

"'Are the appellant Savings Banks, or any of them, entitled to receive before payment of any dividends of the unpreferred creditors, any interest upon their deposits, demands or claims against the American Loan and Trust Company * * *'?"

* * * * *

"'Is the appellant Thomas P. Wickes, as receiver of Coffin & Stanton, entitled to receive before payment of any dividend of the unpreferred creditors any interest upon his claim against the American Loan and Trust Company? * * *'"

The Court stated (f. 377):

"As questions relating to interest are liable to arise so frequently in the settlement of the affairs of insolvent corporations, we adopt the broad, simple and just rule laid down in substance by the Appellate Division, that while interest is allowed as against the corporation itself, or its stockholders, if the assets are sufficient for the purpose, as between preferred and unpreferred creditors no interest is allowed after the law takes charge through the appointment of a receiver."

The Court went on to state (p. 379):

"* * * Interest should not run in favor of one creditor at the expense of another, while the law, acting for all, is administering the assets." * * *

In the case of *United States Fidelity & Guaranty Co.* v. *Carnegie Trust Co. et al.*, 146 N. Y. S. 801, 161 App. Div. 429, a trust company, designated by the City Comptroller as a depository, went into liquidation. On demand, the surety company paid the amount of its liability to the Comptroller and took an assignment of the Comptroller's

claim against the bankrupt. The Court held that the surety company was entitled to a preference, but not as to interest as to which it was entitled to be paid only rateably, with the claims of unpreferred creditors on the authority of *People* v. *American Loan and Trust Company, supra.*

For similar application of the general rule against post assignment interest in other jurisdictions, see:

Leach v. *Sanborn,* 231 N. W. 497;
American Casualty Ins. Co's. case (*Boston & A. R. Co.* v. *Mercantile Trust & D. Co.*) (1896) 82 Md. 535, 38 L. R. A. 7, 34 Atl. 778;
Atty. Gtn. v. *Supreme Council, A. L. H.* (1910) 206 Mass. 131, 92 N. E. 134;
Fordye v. *Kansas City & N. Connecting R. Co.* (1906; C. C.) 145 Fed. 566;
Atlanta Nat. Bank v. *Four-States Grocer Co.* (1911; Tex. Civ. App.) 135 S. W. 1135.

The case of *Leach* v. *Sanborn, supra,* which rested on the authority of *People* v. *American Loan & Trust Co., supra,* was followed in *Cutler* v. *Horgen,* 234 N. W. 238, 213 Iowa, 983, where the general rule was stated. The Court held:

> "The evidence shows that there were not sufficient funds in this estate to pay the creditors in full, with interest on the claims. We have held that, in insolvent estates where this condition exists, creditors, even preferred creditors, are not entitled to interest."

POINT IV.

Section 3466 invoked by the petitioner does not create an exception to the general rule against post assignment interest.

In the case of *City of New York* v. *Saper, supra,* the Court on page 330, after having stated the general rule, said:

> "Our present statute contains no provision expressly repudiating that principle or allowing an exception in favor of tax claims."

In the absence of a statute creating an exception in favor of tax claims, the general rule terminating interest remains applicable. It becomes important, therefore, to ascertain whether or not tax claims, as to interest, have been given a special status. Since Section 3466 makes no specific reference to interest, the question presented is: what is the nature of a tax claim and does it automatically fall within an exception to the general rule of non-payment of post-assignment interest?

It is the government's contention that Federal legislative enactment would be required to limit the payment of interest to the date of filing. It argues that since an act of Congress was required to bring tax claims within the general rule, a similar enactment would be required to create a like limitation in State Court proceedings. It must be borne in mind that such reasoning by the government is based on the fallacious premise that the ruling in the *Saper* case was a determination that a Federal enactment was required to eliminate the payment of post-bankruptcy interest on tax claims.

Analysis of the *Saper* case discloses that the enactment of the several bankruptcy statutes was for the purpose of assimilating taxes to other debts for all purposes,

including denial of post-bankruptcy interest. This Court pointed out, that for a period of fifty years the Bankruptcy Courts, in allowing post-bankrupty interest, did so, in part, because of the existence of Section 64a of the Act of 1898 and, in part, because of an erroneous interpretation of the decision in the case of *In re Kallak*, 147 F. 276, and the line of cases stemming therefrom.

Prior to the enactment of Section 64a, the general rule limiting the payment of interest to the date of filing prevailed. At page 332, the Court stated:

> "The long-standing rule against post-bankruptcy interest thus appears implicit in our current Bankrupt Act. To read into such a statute an exception to that rule would be unwarranted and, as an original proposition, we should decline to do so."

The Court expressly found that the pertinent sections of the present-day Bankruptcy Act contain no provisions which either repudiate the established general rule, or create an exception in favor of the payment of post-bankruptcy interest.

Section 64a of the Act of 1898 reads as follows:

> "Sec. 64. Debts which Have Priority:
>
> (a) The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, State, county, district, or municipality in advance of the payment of dividends to creditors, * * * and in case any question arises as to the amount of legality of any such tax the same shall be heard and determined by the court."

As the Court pointed out, the above section created a special status for tax claims in bankruptcy. In short, a tax claim was not a claim in bankruptcy. Accordingly,

since it was not required to share the bankruptcy fund with other creditors, no logical reason existed for limiting the government's claim for interest to the date of the filing of the petition. However, the creation of such special status under Section 64a, which placed tax claims in a category distinct and apart from ordinary debts, effected no change in the general rule that post-bankruptcy interest shall not be paid on debts of the bankrupt.

Section 64a of the Act of 1898 was changed by amendment, and thereafter, by the Chandler Act, until tax claims once more took their place as claims in bankruptcy along with other debts, albeit they were granted a fourth priority of payment beyond certain wage claims and administration expenses, none of which preferred claims has ever been entitled to the payment of post-bankruptcy interest.

Despite the enactment of these statutes, however, the Courts in bankruptcy, until the *Saper* case, continued to follow the practice of allowing the government post-bankruptcy interest. The reason for the continued practice lay in a misapprehension of the import of the decision in the case of *In re Kallak, supra.*

It was believed the Court, in that case, had judicially construed Section 57j, 11 U. S. C. Section 93(J). This section reads as follows:

> "S. 57(J). Proof and allowance of Claims:
>
> Debts owing to the United States, a State, a county, a district, or a municipality as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued thereon according to law."

In fact, Section 57j, was not mentioned in the Court's decision. Under the mistaken belief, therefore, that Section 57j had been judicially interpreted as entitling the government to post-bankruptcy interest (when in fact, the statute the Court construed was 64a) and, despite the amendment to 64a by the Act of May 27, 1926, the import of which is hereinafter set forth, the Courts continued to allow interest to the date of payment.

Section 15 of the Act of May 27, 1926, Chap. 406, 44 Stat., 662, 666,

> "expressly provided that taxes yield priority to administration expenses and certain wages, neither of which bear interest" (p. 334).

Even after the enactment of the Chandler Act which finalized the subordination of taxes to other priority items, the practice of paying post-bankruptcy interest continued, on the theory that pre-Chandler Act allowances of interest were based on judicial construction of Section 57j which had been adopted by the Congressional re-enactment of that section in the Chandler Act.

The Court rejected this reasoning stating (p. 334):

> "If the case involved construction of any part of the Act of 1898, it clearly was S. 64(a) with its requirements of absolute priority in payment of 'all taxes legally due and owing', which, together with the dispensation from proof, the Court considered as indicating that taxes enjoyed a status entirely different from that accorded ordinary claims. Those provisions were considered controlling while S 57(j) was not mentioned in the opinion. Consequently, the latter section's re-enactment could not be considered a legislative adoption of any 'judicial gloss'

on that section resulting from the Kallak line of cases."

The government's contention in the *Saper* case, that Section 57j created an exception to the general rule, was likewise rejected by this Court, when it said (p. 338):

> "Considered in conjunction with the general rule against post-bankruptcy interest as well as section 63's limitations of interest on other claims to date of bankruptcy, they compel our conclusion, already stated, that the statute as amended did not contemplate any exception in favor of tax claims."

In a footnote (footnote 7, p. 330), the Court made reference to the English practice upon which this general rule was based, including two exceptions:

> "* * * if the alleged 'bankrupt' proved solvent, creditors received post-bankruptcy interest before any surplus reverted to the debtor, (citing cases); and if securities held by a creditor as collateral produced interest or dividends during bankruptcy such amounts were applied to post-bankruptcy interest, (citing cases). These exceptions have been carried over into our system. See *American Iron Co.* v. *Seaboard Air Line*, 233 U. S. 261, 267; *Sexton* v. *Dreyfus*, 219 U. S. 339, 346."

In a footnote (p. 338), the Court also cited the case of *Thomas* v. *Western Car Co.*, *supra*, along with *Sexton* v. *Dreyfus*, *supra*, and *American Iron Co.* v. *Seaboard Air Line*, *supra*, in support of the general rule.

In the State of New York, no law similar to Section 64a of the Act of 1898 has ever appeared on the statute books. Nothing contained in Section 3466 gives character to the contention that a Federal tax claim in connection with a State Court proceeding is not a claim in the pro-

ceeding itself. On the contrary, the section, by specific use of the word "priority", contemplates the presentation of a tax claim as a claim in the estate. There is nothing in the statute which prescribes that interest shall be paid until the date of payment. In none of the cases on the subject has Section 3466 been construed to entitle Federal tax claims to the payment of such interest. Suffice it to say at this time, the burden is on the United States of America to establish by statute or rule of law that tax claims are entitled to post-assignment interest in derogation of the general rule, as enunciated in *Thomas* v. *Western Car Co., supra; People* v. *American Loan and Trust Co., supra,* and the *Saper* case, *supra.* In the absence of such showing, it is respectfully submitted that post-assignment interest should be denied to the United States on its tax claims.

POINT V.

Application of the general rule against post assignment interest in connection with non-lien or unsecured tax claims is not violative of R. S. Section 3466 even if it be assumed that the statute requires tax claims be paid "in full".

The United States argues at considerable length and in great detail in support of its contention that United States tax claims are debts within the definition of R.S. Section 3466 and are therefore entitled to priority of payment in assignment proceedings. The issue is not to be thus confused, for Respondent has no quarrel with that proposition. When, however, the United States urges that a suspension of the running of interest on tax claims would run contrary to Federal statutes, respondent does take issue.

Since a tax is a debt—nothing more—as such, it stands on an even keel with debts due to other creditors with the exception of a priority of payment as required under R.S. Section 3466. In the case of *In re Union Fabrics, Inc.*, 73 Fed. Supp. 685, on page 687, the Court stated:

> "To treat tax claims, so far as interest is concerned, differently than other claims, I think is neither logical, sound nor just. On the contrary such treatment is a clear anomaly and cannot be justified except upon precedent now of doubtful validity since the passage of the Chandler Act. See *People* v. *American Loan Trust Co.*, 172 N. Y. 371, 379, 65 N. E. 200. Such ruling compels payment, not by the debtor whose debt it is but by general creditors who did not incur it, and who were not responsible for the delay in payment, out of their otherwise fractional recovery on their own claims."

R.S. Section 3466 does not require more than that the debt shall be first satisfied. Since a taxpayer is a debtor and the Government a creditor, that which is owing is clearly a debt, subject to the same rights and obligations that any other debt of an unsecured creditor is subject to, the only distinction being that a tax claim is entitled to a priority of payment. So is a wage earner, but he gets no interest after the date of the assignment. If a debt is accorded a priority and receives no interest, why should a tax claim receive interest merely because it has priority of payment of the debt?

Interest although collectible with the tax and added as part of the tax is not a tax; it is no more than compensation for the use of money or damages because of delay in payment of a debt due.

In the case of *Penrose* v. *United States*, 18 Fed. Supp. 413, where the question arose as to whether interest is a

tax permitting its deduction in an estate proceeding, the Court ruled that interest is not a tax. If it is not a tax then it is not entitled to priority of payment as a tax claim is.

It has been assumed by the United States, that "payment in full" of the tax claims herein necessarily means payment of both principal and interest to the day of payment.

In the case of *People* v. *American Loan & Trust Co.*, 172 N. Y. 371, 65 N. E. 200, the Court held that the priority granted to savings bank depositors under a statute was limited to principal although the pertinent section provided for "payment in full" of the deposits. In that case there were both preferred and unpreferred creditors.

In the case of *Matter of People* (*First Russian Ins. Co.*), page 253 N. Y. 365, the Court stated (p. 367):

> "There is indeed a general rule in the distribution of estates that from the time when the assets have been subjected to the administration of the law, interest ceases to run in favor of any creditor who seeks a share of the assets as a beneficiary of the trust, if the result of the allowance of such interest will be to prefer him over others." (*Matter of People* [*Norske Lloyd Ins. Co.*], 249 N. Y. 139.)

Finally in the case of *Hammer* v. *Tuffy*, 145 F. 2d. 447, the Court stated (449):

> "* * * The New York Court of Appeals in *People* v. *American Loan & Trust Co.*, 172, N. Y. 371, 65 N. E. 200, held that the priority granted to savings banks deposits by Sec. 130 of the Banking Law of 1892 was limited to principal, although the section gave priority 'to the payment in full' of the deposits. This seems to be the generally accepted doctrine when the question arises between two

groups of creditors, one of which is entitled to priority by statute or otherwise. Whether or not the priority is stated to be until the group is 'paid in full', the measure of the preference is the payment of the principal. We have collected a number of the cases in the margin*.

**Thomas* v. *Western Car Co.*, 149 U. S. 95, 116, 13 S. Ct. 824, 37 L. Ed. 663; *Taylor* v. *Corning Bank & Trust Co.*, 185 Ark. 691, 48 S. W. 2d 1102; *In re Pacific Coast Building-Loan Association*, 15 Cal. 2d 134, 99 P. 2d 251; *Squire* v. *American Express Co.*, 131 Ohio St. 23, 2 N. E. 2d 766; *In re Prudential Trust Co.*, 244 Mass. 64, 138 N. E. 702; *Federal Deposit Insurance Corp.* v. *Department of Financial Institutions*, 113 Ind. App. 14, 44 N. E. 2d 992."

The authorities cited by the petitioner on the question of post insolvency interest, in the main, consist of cases which involve secured creditors or turned on such statutory language as required the court to direct itself to the equitable considerations applicable to the peculiar circumstances of each case.

The case of *American Iron & Steel Mfg. Co.* v. *Seaboard Air Line Ry.*, 233 U. S. 261, upon which United States so strongly relies, cannot be considered a precedent for the payment of post insolvency interest on a tax claim since it was there held merely, *that one, furnishing railway supplies and perfecting a lien therefor, under a Virginia statute giving priority to such lien over existing mortgage bonds,* was entitled to interest to the date of payment. Not only the nature of the claim, but the specific statutory precedence given to such claims over that of *secured creditors* accounts for the reasons why this court in the case of *City of New York* v. *Saper, supra,* on page 330 footnoted the cited case (Footnote 7) as an exception to the general rule.

The line of cases stemming from *Pennsylvania Steel Co.* v. *New York City Ry. Co.*, 216 Fed. 458, Cert. den. 238, U. S. 632, deals with the claims of supply creditors of insolvent railway companies, the business of which companies *the receiver or trustee continued to operate.*

In the *Pennsylvania Steel* case the Court found that the supply creditors contributed to the maintenance of the railway as a going concern. It found that the supplies *by contract were to be paid for and purchased in such quantities as to indicate they were necessary for current operations and were to be paid for out of current earnings to continue for one year after the completion of the road's construction.*

Respondent will not undertake to discuss all of the cases the United States cites in its brief. Suffice it to say, that practically all of the cases involved secured claims, or specific statutory priorities of such nature as to expressly transcend the claims of unsecured creditors (falling under the express exceptions mentioned in the *Saper case* [*supra*]) or on the other hand decisions rendered prior to the *Saper* case (*supra*) when the law was in a considerable state of confusion.

POINT VI.

The payment of post assignment interest on tax claims is not only inequitable but also contrary to the orderly administration of insolvent estates.

The Court below very aptly stated (R. 27):

> "To allow post-assignment interest on tax claims at variable and substantial rates to run on throughout the course of a lengthy assignment proceeding and thereby consume all or much of the funds available, to the detriment of the other creditors, is in accord with neither law nor equity."

It requires very little analysis to recognize the unfairness resulting from the practice urged by petitioner. The funds in the hands of an assignee are available to all creditors. Out of that fund are paid administration expenses secured claims, unsecured claims including federal, state and local government claims, other priority claims, such as wage claims, and the balance of unsecured claims, that is, if the fund is large enough. If not, the unsecured creditors without priority stand to lose—a result in no way connected with any act on their part. The interest the government demands because of delay in the payment of its claims accrues through no fault of the creditors. Manifold reasons for delay can be cited. In the case at bar, a considerable portion of the assets consisted of accounts receivable which respondent had to liquidate over a period of many months resulting in unavoidable delay.

Frequently, controversies arise as to the merits of filed claims determined only after appeals. Often, the assignor is entitled to a tax refund which cannot be accomplished overnight. If a tax claim of the government is successfully objected to, clearly, the government itself has been the cause of the delay. In the instant case, appeals instituted by the Petitioner and the State of New York, have delayed a final distribution in the estate. Can it be urged in good conscience that, regardless, the government shall receive not only a preference on accrued interest and principal but, in addition, interest upon the entire claim while the property of the estate is in *custodia legis?* To propound the question is to answer it. If, as Petitioner contends, there is a rule permitting the practice then it should never have been permitted to come into existence in the first place.

Common sense dictates that interest should cease to run upon the filing of the proceedings and that there should be made uniform throughout the nation, in all insolvency proceedings, the rule now applicable in bankruptcy.

Conclusion.

Equitably, legally and in the furtherance of orderly administration, Federal tax claims which have not been reduced to liens and have not been given specifically stated priorities for the payment, not only of the claim as such, but for interest as well, should receive priority of payment in the amount of its claim, plus interest and penalties, but only to the date of the assignment.

Respectfully submitted,

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